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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,003	02/28/2002	Dwight Marcus	NPOWR-5-REI	6290
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Howard IP Law Group P.O. Box 226 Fort Washington, PA 19034			EXAMINER ALAM, SHAHID AL	
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			2162	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/087,003

**Applicant(s)**

MARCUS, DWIGHT

**Examiner**

Shahid Al Alam

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-71, 79-83 and 104-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-71, 79-83, 104, 107 and 108 is/are rejected.
- 7) ☒ Claim(s) 105, 106 and 109 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Reissue Applications***

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,032,156 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely appraise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

### ***Response to Arguments and amendment***

2. In view of the supplemental amendment, previous rejections with respect to the rejection(s) of claim(s) 1 – 22, 30 – 35, 36 – 41, 47, 50 – 51, 66, 67, 79 and 80 – 83 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,864,868 issued to David Contois (hereinafter “Contois”) and in view of EP 0564247 A1 issued to Randy Ubillos (“Ubillos”) and claim rejections for claims 42 – 46, 48, 49, 52 – 56, 60 – 65 and 68 – 71 being unpatentable over Contois in view of Ubillos and further in view of U.S. Patent Number 5,966,121 issued to John Hubbell et al. (“Hubbell”).

Withdrawal claims 23 – 29 and 57 has been rejoined with rest of the claims.

Applicant amended claims 1, 11, 30, 36, 79 and 80 and added new claims 104 – 109.

Claims 1 – 71, 79 – 83 and 104 – 109 are pending in this Office action.

In the Instant application 10/087,003 and USP 6,032,156 teaches in paragraph 11, "It is important to note that, in the operation of the system, there is an inhibition layer between the clip and the searching mechanism. The inhibition layer assures that the system does not include in the programming every clip that is responsive to a query provided by a user. The **inhibition mechanism** may be responsive to psychographic characteristics of the user, such as age, level of education, or even reason for the query. The tags are responsive to this type of information. The **inhibition mechanism** may be modified dynamically as the database is mined for suitable assets. The **inhibition mechanism** may be viewed as in a multi-dimensional set of psychographic requirements. Clips can be evaluated for their responsiveness in the various dimensions. The system may set, or the user may select, a length of time for the program, and the **inhibition mechanism** will operate to limit the total number of clips selected to the selected time, as well as choosing clips according to suitability for the viewer and the viewer's purpose.

The inhibition mechanism is taught only in this paragraph and none of the paragraph of instant application teaches about inhibition mechanism.

Applicant's amended portion "employing an inhibition mechanism to select fewer than all the media elements in the database responsive to the request and to select the temporal organization", do not have any support in the above specified paragraph. Therefore, the limitation is not being considered.

Please note that a reissue application is filed to correct an error in the patent which was made without any deceptive intention, where, as a result of the error, the patent is deemed wholly or partly inoperative or invalid. An error in the patent arises out of an error in conduct which was made in the preparation and/or prosecution of the application which became the patent.

The above amended portion is more than a correction for the reissue application.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 23, 30, 79 and 80 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 1, 23, 30, 79 and 80 are method claim. However, the body of the claim is not tied to another statutory class such as a particular apparatus; or physically transform the underlying subject matter. Thus, these claims are non-statutory [Diamond v. Diehr, 450 U.S. 175, Parker v. Flook, 437 U.S. 584, Gottschalk v. Benson, 409 U.S. 63 and Cochrane v. Deener, 94 U.S.

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780]. Dependent claims do not cure the deficiency of the non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11, 23, 79 and 80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how an **inhibition mechanism** to select fewer than all the media elements in the database responsive to the request and selecting the temporal organization as in claims 1 and 11.

It is not clear how selecting, employing an **inhibition mechanism**, a first possible media item automatically from said plurality of possible media items as in claim 80.

It is not clear how selecting, employing an **inhibition layer** to limit the selected media elements to fewer than all the media elements in the database responsive to the request, a first media element with a first attribute value as in claim 79.

It is not clear how to providing in said media program a **sequence of cues**; and receiving from a viewer of said media program information relative to **said cues**.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 35, 36 – 41, 47, 50 – 51, 57, 66, 67, 79, 80 – 83, 104, 107 and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,864,868 issued to David Contois (hereinafter “Contois”) and in view of EP 0564247 A1 issued to Randy Ubillos (“Ubillos”).

With respect to claim 1, Contois teaches a method of creating media programming (abstract, column 11, lines 32 – 33 and column 12, lines 1 – 12), comprising:

maintaining a database containing selected information about each of a plurality of media elements (column 4, lines 39 – 49);

selecting a plurality of said media elements in response to a request for media programming (column 4, lines 46 – 49), and

selecting a temporal organization for said selected media elements (column 13, lines 61 – 63), said temporal organization not being dictated by said selected information (column 4, lines 53 – 55 and 59 – 67).

Contois teaches listings of media elements into media programming (column 11, lines 45 – 56). Contois does not explicitly teach **assembling** said media elements into media programming as claimed.

Ubillos teaches claimed **assembling** said media elements into media programming (see first page, abstract).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the teachings of Contois with the teachings of Ubillos to provide a convenient and intuitive way for a user to select "in" and "out" points for each clip to be included in an edited video program. It would have been obvious to modify because Ubillos system dynamically generates each video clip to be displayed by retrieving from storage all frames of the video clip and displaying the retrieved frames (column 3, lines 18 – 24 and column 13, lines 44 – 47).

As to claim 2, said media elements are audiovisual clips, and said media programming is an audiovisual program (Ubillos: abstract).

As to claim 3, said media elements are still photographs, and said media programming comprises a series of said still photographs (Contois: column 12, lines 15 – 21).

As to claim 4, said selected information comprises content information relating to said media assets (Ubillos: column 8, lines 41 – 56).

As to claim 5, said selected information comprises a plurality of tags associated with each of said media elements, at least one of said tags being a content tag containing information relating to content of said media element, and at least one of said tags being a control tag containing information other than content information (Ubillos: column 8, line 57 – column 9, line 9).



As to claim 6, media element is a media clip, and at least one of said control tags contains transition information (Ubillos: column 7, lines 5 – 12).

As to claim 7, at least one of said control tags contain a luminance range for a portion of said media clip (Ubillos: column 7, lines 19 – 31).

As to claim 8, said step of selecting further comprises selecting two elements based on said request, selecting a temporal order for said two elements, and determining based on information in said control tags whether said two elements may be assembled in the selected temporal order, and, if not, deselecting at least one of said two elements (Contois: column 11, lines 54 – 67 and column 12, lines 1 – 36).

As to claim 9, said step of selecting further comprises selecting two elements based on said request, selecting a temporal order for said two elements, and selecting transitions for said two elements based on transition information associated with each of said elements and transition rules (Contois: column 11, lines 54 – 67 and column 12, lines 1 – 36).

As to claim 10, the step of obtaining demographic information concerning an intended view of a programming prior to said step of selecting, and employing said demographic information in said step of selecting (Ubillos: abstract).

As to claim 47, the step of obtaining desired content information concerning an intended view of a the programming prior to said step of selecting, and employing said desired content information in said step of selecting (Contois: column 4, lines 39 – 67).

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As to claim 66, assembling an automatically assembled media clip into said media programming (Ubillos: abstract).

As to claim 67, obtaining psychographics information concerning an intended view of the programming prior to said step of selecting, and employing said psychographics information in said step of selecting (Contois: column 4, lines 39 – 67).

With respect to claim 23, Contois teaches a method of verifying viewing media program (see abstract), comprising:

providing in said media program a cue (column 4, lines 39 – 67); and  
receiving from a viewer of said media program information relative to said cue, and comparing said receiving information to said cue (column 4, lines 46 – 49 and column 10, lines 7 – 13).

Contois does not explicitly teach **assembling or sequence** said cues as claimed.

Ubillos teaches claimed **assembling** said media elements into media programming (which is similar to sequence as claimed) (see first page, abstract).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the teachings of Contois with the teachings of Ubillos to provide a convenient and intuitive way for a user to select “in” and “out” points for each clip to be included in an edited video program. It would have been obvious to modify because Ubillos system dynamically generates each video clip to be displayed by retrieving from storage all frames of

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the video clip and displaying the retrieved frames (column 3, lines 18 – 24 and column 13, lines 44 – 47).

7. Claims 42 – 46, 48, 49, 52 – 56, 60 – 65 and 68 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Contois in view of Ubillos and further in view of U.S. Patent Number 5,966,121 issued to John Hubbell et al. ("Hubbell").

With respect to claims 42 – 46, 48, 49 and 68 – 71, Contois in view of Ubillos disclosed all the limitations except that they do not explicitly teach transition information, style information, filtering and tagging as taxonomic, attribute and reusability as claimed.

With respect to claims 42 – 46, 48, 49 and 68 – 71, Hubbell discloses claimed transition information transition information, style information, filtering and tagging as taxonomic, attribute and reusability.

As to claims 42 and 43, said transition information comprises: a transition point and a transition type (Hubbell: column 9, lines 53 – 56).

As to claims 44 – 46, said transition type is a dissolve, a cut and a fade (Hubbell: column 7, lines 26 – 30 and column 14, line 65 – column 15, line 6).

As to claim 48, a modification parameter wherein said modification parameter is used to modify a transition (Hubbell: column 5, lines 17 – 25).

As to claim 49, the step of obtaining desired style information concerning an intended view of a the programming prior to said step of selecting, and

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employing said desired style information in said step of selecting (Hubbell: column 4, line 66 – column 5, line 8).

As to claim 68, filtering a first media element out of consideration for inclusion in said media programming wherein said filtering is performed by a moderation layer (Hubbell: column 5, lines 17 – 25).

As to claim 69 – 71, at least one of said tags is a taxonomic tag, an attribute tag and a reusability tag (Hubbell: column 10, lines 20 – 28 and column 14, lines 10 – 16).

Hubbell, further teaches, media element is a media clip, and at least one of said control tags contains transition information (Hubbell: column 10, lines 20 – 28) and at least one of said control tags contain a luminance range for a portion of said media clip (Hubbell: column 5, lines 9 – 25 and column 10, lines 20 – 28).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to combine Hubbell with Contois and Ubillos because combination would permit access to video editing format and to efficient modification of the data signal portion of a multimedia bit-stream (Hubbell: column 2, lines 54 – 61).

The subject matter of claims 11 – 22, 24 – 29 and 50 – 57 are rejected in the analysis above in claims 1 – 10, 23, 42 – 49 and 66 – 71 and these claim are rejected on that basis.

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The subject matter of claims 30 – 35 and 60 – 62 are rejected in the analysis above in claims 1 – 10, 23, 42 – 49 and 66 – 71 and these claim are rejected on that basis.

The subject matter of claims 36 – 41 and 63 – 65 are rejected in the analysis above in claims 1 – 10, 23, 42 – 49 and 66 – 71 and these claim are rejected on that basis.

The subject matter of claims 79, 80 – 83, 104, 107 and 108 are rejected in the analysis above in claims 1 – 10, 23, 42 – 49 and 66 – 71 and these claim are rejected on that basis.

***Allowable Subject Matter***

8. Claims 105, 106 and 109 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M. - 4:00 P.M. .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shahid Al Alam/  
Primary Examiner, Art Unit 2162

May 24, 2010